

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAGOBERTO LOPEZ FLOREZ,

Petitioner,

v.

WARDEN, FCI MENDOTA,

Respondent.

No. 1:23-cv-00307-HBK (HC)

ORDER GRANTING RESPONDENT'S  
MOTION TO DISMISS<sup>1</sup>

(Doc. No. 8)

Petitioner Dagoberto Lopez Florez ("Petitioner"), a former federal inmate, is proceeding pro se on his petition for writ of habeas corpus under 28 U.S.C. § 2241, filed while he was incarcerated at Federal Correctional Institution ("FCI") Mendota, located in Fresno County, California, which is within the venue and jurisdiction of this Court. (Doc. No. 1, "Petition"). The Petition challenges the execution of Petitioner's sentence. (*Id.* at 6). Specifically, the Petition raises one claim: the Bureau of Prisons ("BOP") unlawfully excluded Petitioner from applying earned time credits (FTCs) due to his immigration detainer, which contravenes the First Step Act. (*Id.* at 6); *see* 18 U.S.C. § 3632(d)(4)(A), (C) (providing that time credits earned from completion of evidence-based recidivism reduction programming productive activities shall be applied toward time in prerelease custody or supervised release). Petitioner requests the Court to issue an

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<sup>1</sup> Both parties have consented to the jurisdiction of a magistrate judge, in accordance with 28 U.S.C. § 636(c)(1). (Doc. No. 10).

1 injunction compelling the BOP to calculate and apply his earned time credits. (Doc. No. 1 at 7).

2 In response, Respondent filed a Motion to Dismiss with Appendix on June 15, 2023.  
 3 (Doc. No. 8, 8-1). Respondent argues the Court lacks jurisdiction to consider the Petition because  
 4 Petitioner's release from custody moots the Petition; and in the alternative, dismissal is  
 5 mandatory because Petitioner did not exhaust his administrative remedies. (Doc. No. 8 at 2-4).  
 6 Petitioner did not file a response to the motion, nor request an extension of time to respond, and  
 7 the time for doing so has expired. (See Doc. No. 6 at ¶ 4, advising Petitioner that he has twenty-  
 8 one (21) days to file a response if Respondent files a motion to dismiss). For the reasons set forth  
 9 more fully herein, the Court grants Respondent's Motion to Dismiss.

## 10 I. BACKGROUND

### 11 A. Procedural History

12 In 2011, Petitioner pled guilty in the Middle District of Florida for conspiracy to possess  
 13 with intent to distribute five kilograms or more of a mixture or substance containing a detectable  
 14 amount of cocaine while on board a vessel subject to U.S. jurisdiction in violation of 46 U.S.C.  
 15 §§ 70503(a)(1), 70506(a), 70506(b) and 21 U.S.C. § 960(b)(1)(B)(ii); and he was sentenced to  
 16 serve an term of 168 months of federal incarceration. See *United States v. Florez et al.*, 8:11-cr-  
 17 00363-SDM-CPT-1, Crim. Doc. Nos. 100, 128 (M.D. FL.).<sup>2</sup> At the time Petitioner commenced  
 18 this action, he was incarcerated in FCI Mendota. Petitioner was released from BOP custody on  
 19 June 2, 2023. At the time Respondent filed the Motion to Dismiss, Petitioner was being held at  
 20 Winn Correctional Center awaiting deportation. (Doc. No. 8 at 2).

### 21 B. The First Step Act

22 The First Step Act ("FSA"), enacted December 21, 2018, provided for considerable  
 23 changes to the federal criminal code, including several prison and sentencing reforms. First Step  
 24 Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194 (2018). One such reform under the First Time  
 25 Act entailed the implementation of Federal Time Credits ("FTCs"). 18 U.S.C. § 3632(d)(4)(A).  
 26 Essentially, an inmate "who successfully completed evidence-based recidivism reduction

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 28 <sup>2</sup> The undersigned cites to the record in Petitioner's underlying MDFL criminal cases as "Crim. Doc. No. —."

programming or productive activities” “shall earn 10 days of time credits for every 30 days of successful participation.” *Id.* These FTCs earned by eligible inmates are “applied toward time in prerelease custody or supervised release.” *Id.*

Additionally, the FSA authorized the BOP to use a risk and needs assessment system, “PATTERN,” and designate a prisoner with a minimum, low, medium, or high-risk score. *United States v. DeCaro*, No. 2022 WL 4395905, at \*1 n.1 (E.D. Mo. Aug. 23, 2022). Inmates who receive a minimum or low-risk score over two consecutive assessments earn an additional five days of time credits for every 30 days of successful participation in evidence-based recidivism reduction programming (EBRR programming) or productive activities (PAs). 18 U.S.C. § 3632(d)(4)(A)(ii); *Orihuela v. Engleman*, 2022 WL 18106676, at \*1 (C.D. Ca. Nov. 3, 2022) (“A prisoner’s PATTERN score may affect the rate at which he earns FTC for his participation in EBRRs and Pas.”).

Inmates may begin earning FTCs once their term begins, but an inmate cannot earn FTCs for programming or activities in which he or she participated in prior to the enactment of the FSA on December 21, 2018. 28 C.F.R. § 523.42. An inmate can earn retroactive application of FTCs for EBRR programming or PAs in which he or she participated in from December 21, 2018, to January 13, 2022. *Id.*

## II. APPLICABLE LAW AND ANALYSIS

Under Rule 4, if a petition is not dismissed at screening, the judge “must order the respondent to file an answer, motion, or other response” to the petition. R. Governing 2254 Cases 4. The Advisory Committee Notes to Rule 4 state that “the judge may want to authorize the respondent to make a motion to dismiss based upon information furnished by respondent.” A motion to dismiss a petition for writ of habeas corpus is construed as a request for the court to dismiss under Rule 4 of the Rules Governing Section 2254 Cases. *O’Bremski v. Maass*, 915 F.2d 418, 420 (9th Cir. 1990). Under Rule 4, a district court must dismiss a habeas petition if it “plainly appears” that the petitioner is not entitled to relief. *See Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998).

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1           **A. Mootness**

2           Under Article III, Section II of the Constitution, a federal court’s jurisdiction is limited to  
 3 adjudication of “live” cases and controversies. *See Hollingsworth v. Perry*, 570 U.S. 693, 705  
 4 (2013) (“Article III demands that an actual controversy persist throughout all stages of  
 5 litigation.”) (internal quotation marks omitted); *see also Arizonans for Official English v.*  
 6 *Arizona*, 520 U.S. 43, 67 (1997) (Article III’s “cases” and “controversies” limitation requires that  
 7 “an actual controversy . . . be extant at all stages of review, not merely at the time the complaint is  
 8 filed,”) (internal quotation marks omitted). Federal courts consider various doctrines, including  
 9 “standing,” “ripeness,” and “mootness” to ascertain whether a meets the “case and controversy”  
 10 requirement. *See Poe v. Ullman*, 367 U.S. 497, 502-505 (1961). To maintain a claim, a litigant  
 11 must continue to have a personal stake in all stages of the judicial proceeding. *Abdala v. INS*, 488  
 12 F.3d 1061, 1063 (9th Cir. 2007) (internal citation omitted). A case must be dismissed if it  
 13 becomes moot at any stage. *See City of Mesquite v. Aladdin’s Castle*, 455 U.S. 283, 288 (1982).  
 14 Absent collateral consequences, a “habeas petition does not continue to present a live controversy  
 15 once the petitioner is released from custody.” *Abdala*, 488 F.3d at 1064; *see also Kelley v.*  
 16 *Brewer*, 2023 WL 2992823, at \*3 (E.D. Cal. Apr. 18, 2023) (“there is nothing capable of being  
 17 redressed by a favorable judicial decision because the BOP has already calculated his FSA credits  
 18 and released [the petitioner]. In other words, petitioner’s case is moot absent demonstrable  
 19 collateral consequences arising from BOP’s calculation of his FSA credits.”); *Fower v. Birkholz*,  
 20 2023 WL 3828775, at \*1 (C.D. Cal. May 4, 2023) (“Petition is moot because Petitioner obtained  
 21 the relief he sought in the Petition – release from BOP custody after the application of his FSA  
 22 credits.”).

23           Here, Petitioner no longer is in BOP custody. Thus, the operative Petition is moot.  
 24 Because the Petition is moot, the Court lacks jurisdiction to consider any claims raised in the  
 25 Petition.

26           Accordingly, it is **ORDERED**:

- 27           1. Respondent’s Motion to Dismiss (Doc. No. 8) is GRANTED.
- 28           2. The Petition for Writ of Habeas Corpus (Doc. No. 1) is DISMISSED as moot.

3. The Clerk of Court is directed to terminate any pending motions and close this case.

Dated: October 24, 2023

  
HELENA M. BARCH-KUCHTA  
UNITED STATES MAGISTRATE JUDGE